

## **Agency Response to Public Comments**

### **Second Public Comment Period on LSA #25-321**

The Bureau of Motor Vehicles received comments during the second public comment period on the proposed rules of LSA Document #25-321 via written submissions and the second public hearing held on November 14, 2025. The following is a summary of the comments made by members of the public and the agency's response to those comments:

Comment: Most comments received followed a general template that raised three concerns: (1) Hoosiers have been able to update their gender on their ID cards for decades with no evidence of any negative impact as a result; (2) a fear of harassment or violence if forced to obtain licensure that does not match their presented gender identity; and (3) use of one's ID is prevalent in day-to-day life and preventing trans individuals from obtaining updated documents prevents them from freely participating in public life.

Response: The BMV is required to adhere to Indiana and federal laws and regulations. In addition, as an executive agency, the BMV is required to comply with executive orders unless the order is either explicitly exempted by statute or preempted by federal law. As such, the BMV is bound by *Indiana Bureau of Motor Vehicles v. Simmons*, 233 N.E.3d 1016 (Ind. App. 2024), as well as by Executive Order 25-36.

The *Simmons* Court concluded that “until the legislature otherwise directs, . . . ‘sex’ is the definition of ‘gender’ and . . . under Title 9 generally and under [Ind. Code §] 9-24-11-5(a)(6) specifically, . . . refer[s] to the division of being either female or male.” *Indiana Bureau of Motor Vehicles v. Simmons*, 233 N.E.3d 1016, 1027 (Ind. App. 2024) (as modified by *Indiana Bureau of Motor Vehicles v. Simmons*, 236 N.E.3d 1159 (Ind. App. 2024)).

Executive Order 25-36 defines “female” as one belonging to the sex that produces the large reproductive cell at conception, and defines “male” as one belonging to the sex that produces the small reproductive cell. As a result, the proposed rule is necessary to maintain compliance with Indiana law.

Comment: The proposed rule is discriminatory, serves no rational government interest, and impedes equal access to government services as the rule will effectively bar all transgender, gender diverse, or intersex Hoosiers from obtaining credentials which accurately reflect their identity.

Response: In *Simmons*, the Court ruled that the BMV's binary-only credential policy did not violate the Equal Protection Clause because the BMV's policy was neither irrational nor arbitrary in light of the governmental interests of accurately, consistently, and efficiently identifying licensees; promoting consistency with other statutes; and maintaining administrative efficiency.

While the *Simmons* Court essentially determined that "sex" is synonymous to "gender" and refers to the division of being female or male, it is important to note that the Court's conflation of "sex" with "gender" is only for the purposes of “Title 9 generally and under [Ind. Code §] 9-24-

11-5(a)(6) specifically.” *Simmons* at 1027. Including biological or binary sex on a credential is not a denial of gender diversity, but a reflection of practical realities that coexist with personal identity because biological sex and gender identity serve different but equally important functions. The proposed rule is not aimed at discriminating against gender-diverse Hoosiers or denying gender diversity; rather, it is aimed at ensuring the effective and efficient functioning of government systems and processes and maintaining compliance with state and federal laws and regulations.

Comment: Many comments were received requesting that the BMV continue to offer non-binary “X” designations on credentials.

Response: The *Simmons* Court did not uphold the BMV’s discretion to offer a non-binary “X” gender marker. Rather, the *Simmons* Court concluded that “until the legislature otherwise directs, . . . ‘sex’ is the definition of ‘gender’ and . . . under Title 9 generally and under [Ind. Code §] 9-24-11-5(a)(6) specifically, . . . refer[s] to the division of being either female or male.” *Simmons* at 1027.

Comment: In opposing the BMV’s proposed rule, some commenters questioned why gender is included on credentials, recommending that gender no longer be included on credentials.

Response: The REAL ID Act sets forth the minimum document requirements and issuance standards established by the Department of Homeland Security for federal recognition of state identification. Among these is the information state driver’s licenses and identification cards must contain, which includes “[t]he person’s gender.” REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, Title II, § 202(b)(3) (codified in 49 U.S.C. § 30301 note). Thus, federal law requires a person’s gender to be included on a REAL ID compliant credential.

Comment: In opposing the BMV’s proposed rule, some commenters alleged that the rule would discourage businesses from moving to or staying located in Indiana and as such would negatively impact Indiana’s revenue.

Response: As discussed in the first comment above, as a result of the Court’s ruling in *Simmons*, coupled with Executive Order 25-36, the proposed rule is necessary to maintain compliance with Indiana law.

Comment: In opposing the BMV’s proposed rule, some commenters alleged that the rule would be burdensome to affected individuals.

Response: As discussed in the first comment above, the BMV must comply with *Simmons*, as well as Executive Order 25-36 to maintain compliance with Indiana law.

Comment: In opposing the BMV’s proposed rule, a comment mentioned that it was not burdensome to allow individuals to keep their current markers as the BMV already allows individuals to change their name or address on licenses.

Response: While it is true that the BMV does allow individuals to change the name or address

associated with their license, this is because Indiana law has provided the legal process through which to request such change and permits such actions. By contrast, the combination of *Simmons* and Executive Order 25-36, which the BMV is required to be compliant with, does not allow the same action with regards to one's sex identification.

Comment: In opposing the BMV's proposed rule, a comment inquired as to whether this was an attempt to limit voting rights for affected individuals.

Response: While the BMV offers the opportunity to register to vote at their branches, the BMV is not involved in the decision making or processing of voter registrations. The proposed rule has nothing to do with voting as the BMV does not have the power or authority to impact an individual's voting rights.

Comment: In opposing the BMV's proposed rule, a comment stated that sex is more complicated than simply being male or female and as such the rule should not be enacted.

Response: As detailed previously, the BMV must comply with Executive Order 25-36, which states that sex is determined binarily at conception. While gender identity can be a complex and multifaceted concept important to an individual's sense of self, gender identity is distinct from gender or sex. *Simmons* and Executive Order 25-36 plainly state that sex is limited to either male or female.

Comment: In opposing the BMV's proposed rule, a comment stated that the *Simmons* decision only addressed gender "X" and did not preclude changing gender markers.

Response: The comment's assertion is not inaccurate, but it fails to consider Executive Order 25-36 and its interplay with *Simmons*. *Simmons* defines sex as being the same as gender, and sex as being either male or female. Executive Order 25-36 defines both male and female as being determined at conception. When both *Simmons* and Executive Order 25-36 are taken together, they do not allow the switching of gender markers. As detailed previously, the BMV must comply with *Simmons* and Executive Order 25-36.

Comment: In opposing the BMV's proposed rule, a comment stated that executive orders cannot transform a permissible agency function into a prohibited one, nor can they override existing regulations that remain within an agency's lawful discretion.

Response: As an executive state agency, the BMV is legally obligated to comply with executive orders unless the order is either explicitly exempted by statute or preempted by federal law. Executive Order 25-36 is neither in conflict with any current Indiana statute governing the BMV's core functions nor is the order preempted by federal law, and thus, the BMV is required to comply with Executive Order 25-36. As such, the comment's assertions are misguided.